



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CAP, a Joint Venture

File: B-229571

Date: February 1, 1988

DIGEST

1. Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.
2. Protest alleging apparent defects in a request for proposals is untimely where it was not filed prior to the closing date for receipt of initial proposals.
3. Protest concerning awardee's performance of the contract is dismissed since this involves a matter of contract administration which is not reviewed by the General Accounting Office.

DECISION

CAP, a Joint Venture, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 9-BG32-71-7-32P, issued by National Aeronautics and Space Administration's (NASA) Johnson Space Center, for engineering support services at the Center for a base period of 1 year with 4 years of options. CAP essentially argues that the agency improperly evaluated the proposals.

We deny the protest in part and dismiss it in part.

The RFP, which contemplated the award of a cost-plus-award fee, level-of-effort contract was issued on May 15, 1987. It provided that proposals would be evaluated based on four major evaluation factors: (1) mission suitability, (2) cost, (3) experience and past performance and (4) other factors. In the evaluation, mission suitability and cost were to be equal to each other but to be given more weight than experience and past performance which in turn was to be

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accorded more weight than other factors. The solicitation further explained that only the mission suitability factor was to be numerically scored and was broken down into the following criteria and subcriteria:

Key Personnel

- (a) Suitability of Project Manager
- (b) Suitability of Other Key Personnel

Operations and Organization

- (a) Operations Plan
- (b) Organization

Company Resources

- (a) Recruiting and Staffing

Understanding the Requirement

- (a) Total Compensation Plan
- (b) Technical Complexities

On the June 29 closing date, NASA received six proposals. After the evaluation of initial proposals, the evaluators concluded that four of them, including the protester's proposal, were to be eliminated from the competitive range. The proposals which were included in the competitive range and which were to be the subject of discussions received initial mission suitability scores of 981 and 912. They proposed costs of \$13.99 million and \$12.16 million for 5 years. In contrast, CAP's proposal received a mission suitability score of 235 (the lowest received by any of the six offerors) and proposed a 5-year cost of \$19.85 million.

CAP was informed by letter dated August 26 that its proposal was rejected and not included within the competitive range. The letter explained that the NASA evaluators had concluded that the CAP proposal was substantially weaker than the proposals submitted by those firms in the competitive range in the areas of suitability of project manager and other key personnel, operations plan, organization, recruiting and staffing, total compensation plan and technical complexities. The letter also noted that CAP's proposed costs were substantially higher and its experience significantly weaker than those firms in the competitive range.

CAP protested the rejection of its proposal prior to award. Nonetheless, NASA determined pursuant to 31 U.S.C. § 3553(c)(2) (Supp. III 1985) that urgent and compelling circumstances significantly affecting the interests of the United States did not permit waiting for our decision and awarded the contract to Brown & Root Services, Inc.

Although CAP's specific arguments are not all precisely drawn it is evident that it challenges the fairness of NASA's technical evaluation in the areas related to compensation plan and company experience. It also seems to argue that it was improperly downgraded because it chose to retain the current workforce. The protester also questions whether a proper cost evaluation was conducted. Although the agency has not provided the protester with its evaluation documents, we have reviewed the evaluation materials in camera and for the reasons cited below, we conclude that CAP's proposal was properly rejected.

In reviewing protests concerning the evaluation of proposals and the resulting determination of whether a proposal is in the competitive range, our Office's function is not to re-evaluate the merits of proposals and make our own determinations. Proposal evaluation is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Tiernay Turbines Inc., B-226185, June 2, 1987, 87-1 CPD ¶ 563. Procuring officials have a certain degree of discretion in evaluating proposals, and we will examine an agency's evaluation only to ensure it had a reasonable basis. Maxima Corp., B-220072, Dec. 24, 1985, 85-2 CPD ¶ 708. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Rice Services, B-218001.2, Apr. 8, 1985, 85-1 CPD ¶ 400.

CAP argues that its proposal was not fairly evaluated under the factor related to the compensation plan. In this regard, the protester argues that the RFP required that the proposed compensation plans be equivalent to that offered under the incumbent contract and states that based on information it has received the awardee's plan has resulted in a substantial reduction in benefits to the workers. Apparently, the protester believes that it offered a plan which was equivalent to that offered by the prior contractor and it was unfairly downgraded while the awardee's lesser plan was considered acceptable.

First, the RFP did not specify that an offeror's proposed compensation plan had to be equivalent to that offered by the incumbent, but stated that the compensation plan

proposed must be "realistic" so that the contractor could maintain a competent workforce. As far as CAP's plan is concerned, it was given a poor rating by the evaluators and received 60 out of a possible 150 points. It was the lowest rated of the six proposals on this factor. According to the record, the evaluators concluded that CAP's plan, which proposed payment of employee insurance premiums and allowed standard vacation and holiday leave, did not demonstrate that the protester understood the agency's requirements as it did not provide the qualifications for professional positions, sufficient information establishing the salary ranges or contain the requested discussion of compensation plan experience.

On the other hand, the record shows that the evaluators gave the awardee a good rating and a score of 123 for its compensation plan. Although the evaluators noted some weaknesses such as a 45-hour work week and lower salary ranges than those paid by the incumbent, in the agency's judgment this was more than offset by the strengths in this area. In this regard, the evaluators determined that the education and experience requirements established by the awardee for professional positions would result in the hiring and retention of qualified employees, the proposed salary ranges were based on surveys both outside and within the company, the fringe benefits took into account civic and legal needs as well as insurance considerations and also addressed emergency leave, relocation expenses, severance pay and an optional savings plan. The record does not support a conclusion that the agency was unreasonable in judging that the plan proposed by the awardee was superior to that proposed by CAP.

CAP also argues that it was unreasonably downgraded because it proposed to staff the project primarily with the incumbent workforce. The evaluators' report shows that CAP was rated poor in recruiting and staffing because it did not (1) provide any assurance that the contract would be fully staffed, (2) identify a specific plan for retention or recruitment, (3) undertake any initial recruiting effort, (4) provide any specific information concerning nonincumbent recruiting, and (5) did not provide the table of resources requested by the RFP. These problems were also reflected in the unsatisfactory rating given the protester under the "Suitability of Key Personnel" factor. The RFP warned offerors that failure to have key personnel committed to the project might have an adverse impact on their score. The evaluators found that CAP provided no assurance that the current personnel would accept the positions and did not identify suitable backup personnel. In fact, the protester's proposal stated "A crucial portion of our plan revolves around our ability to contact, evaluate, and

receive commitments from the existing key staff personnel." CAP did not propose using any of its current personnel on the project except to provide administrative control. We find no reason to disturb the agency's evaluation on this point.

The protester also argues that it was improperly rated as poor under the company experience evaluation factor. CAP points out that it has significant experience in industrial and commercial facilities design and construction. It also notes that the bulk of the work under the contract involves civil, electrical and mechanical engineering and management skills; fields in which the protester is experienced. CAP disputes what it categorizes as NASA's conclusion that it needs experience in the "space industry" as the tasks to be performed have little to do with space launches, but concern the basic engineering and management areas which fit within the protester's expertise. Finally, the protester maintains that the awardee likewise has little "space industry" experience and concludes that if it was proper to downgrade it for the lack of such experience the awardee should also have been downgraded.

The record shows that the evaluators determined that neither the protester nor its parent companies had experience managing a contract as large as the one here. Further, while the evaluation record does not show that the protester was downgraded for lack of "space industry" experience it does show that the evaluators were concerned that the protester lacked broad research and development and industrial facilities design experience, and that the background experience provided in the proposal was not pertinent to the contract requirements.

The evaluators rated the awardee excellent in this area. Their conclusion was based on the awardee's extensive 70 year history of experience in the public and private sectors, including relevant experience in the construction of prison facilities and naval facilities. Additionally, the awardee's experience with the use of computer aided drawing systems was found to be relevant to NASA's requirements under the contract. We again find no basis to conclude that the agency's evaluation was unreasonable. Further, the record supports the evaluators' determination that the awardee's experience was both more extensive and relevant.

CAP also alleges that NASA did not document its cost evaluation of the proposals. The record shows that this was not the case. In addition to reviewing the proposed costs, the evaluators calculated a probable cost for each offeror given the cost elements of its proposal. A narrative

assessment was written for each cost proposal which included the reasons for making the specific adjustments used to arrive at probable cost. Further, the costs proposed by the protester were the second highest of all the proposals submitted. The probable cost adjustments resulted in lowering those costs, but the reduction still resulted in CAP's probable costs being third highest. We have no basis upon which to object to the agency's analysis of the cost proposals.

In sum, the evaluation supports the agency's conclusion that the protester did not have a reasonable chance for the award and that its proposal was substantially inferior to that submitted by the awardee. Consequently, we believe that the agency acted reasonably in not including the protester's proposal in the competitive range.

CAP also complains that NASA did not notify the offerors that its source selection procedures, which according to the protester differ from those set forth in Subpart 15.6 of the Federal Acquisition Regulation (FAR), could limit discussions with offerors. In fact, FAR § 15.613 provides that NASA may use source selection procedures "that limit discussions with offerors during the competition and that differ from other procedures prescribed in Subpart 15.6." Additionally, section M of the RFP, "Evaluation Factors for Award," specifically notified the offerors that the proposals would be evaluated "in accordance with applicable regulations which include particularly the NASA FAR Supplement and the current NASA Source Evaluation Manual." Moreover, since CAP was properly excluded from the competitive range, NASA would not in any event have conducted discussions with CAP. Aydin Corp., B-224354, Sept. 8, 1986, 86-2 CPD ¶ 274.

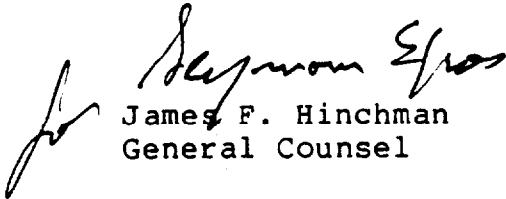
The protester also contends that the awardee will not be performing in accordance with the contract terms. Specifically, CAP states that the awardee had only part of the required staff in place by the contract start-up date, that it has suspended certain employee fringe benefits, and intends to use office facilities outside of the contractually required areas. Because these allegations concern whether the awardee is properly performing under the contract, they involve matters of contract administration which our Office does not review. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1987); Minncor, Inc., B-225419.3, et al., Aug. 25, 1987, 87-2 CPD ¶ 202.

CAP complains that certain of the RFP requirements were not clearly defined. It believes that the RFP did not provide a definitive statement of federal and NASA minority participation goals. Additionally, it argues the RFP should have

spelled out what the incumbent's benefits were and should have more clearly defined the minimum requirements of the technical evaluation. Since these objections involve apparent solicitation defects which should have been raised prior to the RFP's closing date, these grounds of protest are untimely filed and will not be considered. See 4 C.F.R. § 21.2(a)(1).

Finally, CAP complains that our Office gave the agency 25 working days to respond to the protest and gave it only 7 working days to respond to the agency's report. The time periods allowed both the protester and the agency are those which are clearly set forth in our regulations. See 4 C.F.R. § 21.3(c) and (e).

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel